

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOINT MOTION TO CONTINUE TRIAL OF DECEMBER 18, 2006

Now comes the undersigned counsel, and jointly move this Honorable Court to continue the trial of the above named case that is presently scheduled to begin on December 18, 2006, to a date after the second week in March, 2007. As reasons herefore, the parties state as follows:

1. The case was last before the Court on October 17, 2006, for an interim status conference. On that date, counsel for the government and for the defendant appeared before this Honorable Court. At the status conference it was related to the Court that the parties have been in discussions of a possible plea and if so, the parties would argue their respective positions on the guideline calculations at sentencing. No plea agreement has been entered at this point. It was also related that the trial is expected to last approximately one week.
2. The defendant is presently incarcerated in Missouri and is serving a sentence. The defendant's earliest

release date from that facility is sometime in 2011.

3. At the status conference, the government informed the Court that Federal Bureau of Investigation Special Agent Jennifer Weidlich, who is the agent assigned to this case and who is a potential witness in this case, is expecting a child and will be out on maternity leave for January and February, 2007, and is expected back to work approximately the second week in March, 2007. At that conference, the government informed the court that it was awaiting further information from the agent relative to this issue.
4. Also on that date, counsel for the defendant informed the court that he would like to go to Missouri, to speak with the defendant in person relative to this case and possible trial. Today, November 3, 2006, counsel for the defendant filed a motion for travel funds. In that motion, defense counsel indicated that he has made arrangements to fly to Missouri and back on November 13, 2006 to meet with the defendant and with mental health specialists who have treated and/or evaluated the defendant.
5. Also at the status conference, both counsel indicated that they would agree to a trial date of March 2007, for this case.
6. Also on that date, the Court inquired of the government

the expected number of witnesses it may call at trial.

The government informed the court that the undersigned attorney had been re-assigned this case and the prior prosecutor who indicted the case had estimated approximately fifteen witnesses at trial.

7. Also on that date, the government informed the Court that it has a trial scheduled to begin in Boston on December 11, 2006, that is expected to last approximately one week (United States v. Elsa Ondina Herrera-Martinez, case no. 06-CR-10134-PBS). That trial will involve arranging to fly a victim, who is serving in the military, here from Arizona to testify at trial.¹
8. At the status conference, this Honorable Court scheduled the above named case for trial to begin on December 18, 2006. The Court also scheduled a further status conference for November 16, 2006.
9. Since that date, the government has received further information from the special agent. She has been informed by medical personnel that she may be hospitalized as early as December 22, 2006, for

¹ On November 2, 2006, defense counsel in that case filed a motion to continue. Primarily due to the fact that the victim in that case is currently serving in the military, the government has indicated will be filing an opposition to continue that trial. A hearing on that motion is scheduled for November 15, 2006.

delivery of her child. (However, she indicated she will not know for certain until it gets closer to that time.) That is the end of the week that this case is scheduled for trial. The government asserts that it would be prejudiced by not having the agent present throughout the entire trial and also having that agent sit at counsel table during the trial to assist with this case. Further, the government asserts that there is no prejudice to the defendant should this case be continued until March, 2007, as the defendant is presently serving a sentence.

10. This information has been communicated to counsel for the defendant. Counsel for the defendant has informed the government that he would join in this request for a continuance.

For the foregoing reasons, the parties jointly request that this Honorable Court allow the motion to continue the trial to a date after the second week in March, 2007. Should the Court require a hearing on this motion, the parties would request that a hearing be held as expeditiously as possible.

Respectfully submitted,

DARRYL YOUNG
By his attorney,

MICHAEL J. SULLIVAN
United States Attorney

s/ James G. Reardon, Jr.
JAMES REARDON, JR., Esq.

By: s/ Suzanne M. Sullivan
SUZANNE M. SULLIVAN
Assistant U.S. Attorney
(617) 748-3146

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